



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2005

Ms. Sheri Bryce Dye
Assistant District Attorney
Bexar County Criminal District Attorney's Office
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2005-03934

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223610.

The Bexar County Sheriff's Office (the "sheriff") received a request for information relating to a named inmate of the county jail.¹ You inform us that the sheriff has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.²

Initially, we address your obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the

¹We note that the requestor also asks a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the sheriff to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the sheriff received this request for information on February 8, 2005. The date of your request for this decision, March 1, 2005, was beyond your ten-business-day deadline under section 552.301(b). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As your claims under sections 552.101 and 552.134 of the Government Code can provide compelling reasons for non-disclosure, we will address these exceptions.

We begin with section 552.134, as it is the more inclusive exception you claim. This section states that

[e]xcept as provided by Subsection (b) [of section 552.134] or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Thus, section 552.134 is applicable to information that relates to an inmate of the Texas Department of Criminal Justice. The submitted information relates to an inmate of the Bexar County jail. You do not explain, and it is not otherwise clear, how or why section 552.134 would be applicable to any of the submitted information. We therefore conclude that the sheriff may not withhold any of the submitted information under section 552.134.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency compiles criminal history information with respect to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. *See*

U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). Therefore, to the extent that the requested information relates to the named inmate as a suspect, arrestee, or defendant in a matter other than the one that resulted in his incarceration, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

Common-law privacy also encompasses the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See, e.g., Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked information that the sheriff must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.101 also incorporates constitutional privacy, which protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See Open Records Decision No. 455 at 7. Constitutional privacy is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (quoting *Ramie*, 765 F.2d at 492). The inmate visitor information that we have marked must be withheld from the requestor under section 552.101 in conjunction with constitutional privacy. See Open Records Decision No. 430 (1985) (list of inmate's visitors protected by constitutional law); cf. Open Records Decision No. 428 (1985) (list of inmate's correspondents protected by constitutional privacy).

Section 552.101 also encompasses information that another statute makes confidential. The 1990 amendments to the Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for a conclusion that this inmate's social security number is confidential under

section 405(c)(2)(C)(viii)(I) so as to be excepted from public disclosure under section 552.101 on the basis of the federal law. Nevertheless, we caution you that the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Prior to releasing this social security number to a member of the public, you should ensure that it was not obtained and is not maintained by the sheriff under any provision of law enacted on or after October 1, 1990.

Lastly, we note that the submitted information includes a Texas driver's license number. Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"³ Gov't Code § 552.130(a)(1). The Texas driver's license number that we have marked must be withheld from the requestor under section 552.130.

In summary: (1) any information that relates to the named inmate as a suspect, arrestee, or defendant in a matter other than the one that resulted in his incarceration must be withheld under section 552.101 in conjunction with privacy under *Reporters Committee*; (2) the sheriff must withhold the information that is protected by common-law privacy under section 552.101; (3) the sheriff must withhold the visitor information under section 552.101 in conjunction with constitutional privacy; (4) the sheriff may be required to withhold the inmate's social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (5) the Texas driver's license number must be withheld under section 552.130. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

³Unlike other exceptions to disclosure, this office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception to disclosure and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

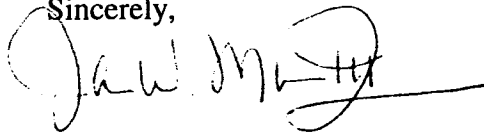
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/krl

Ref: ID# 223610

Enc: Submitted documents

c: Mr. Tom Honeycutt
Investigator
P. O. Box 6196
San Antonio, Texas 78209
(w/o enclosures)